

REMARKS

The claim amendments along with the following remarks are fully responsive to the Office Action set forth above. Claims 1, 8, 23 and 30 are amended. New claims 42 and 43 are added. Claims 4, 33 and 36-41 are withdrawn. After this amendment, claims 1-3, 5-32, 34, 35, 42 and 43 are pending in the application.

Amendments to the Claims

Claim 1 is amended to further recite that the multispecific targeting protein and hapten-enzyme covalent conjugate are mixed together in the ratio of from 5:1 to 1:5.

New claim 42 is added to further recite that the conjugate is mixed together in the ratio of from 2:1 to 1:2 and new claim 43 is added to recite that the conjugate is mixed together in the ratio of 2:1.

No new matter is added by these amendments. Support for these amendments may be found throughout the Specification and at least paragraph [0027] and Tables 1-6 of the application as filed.

Specification

The disclosure is objected to because the US Application serial numbers 10/116,116 and 09/337,756 were not updated. With this Amendment, the information for USSN 09/337,756 and published U.S. application 20020006379 has been updated; however, the information for USSN 10/116,116 was already current. Accordingly, the objection should be withdrawn.

Claim Objections

Claims 1, 8 and 23 are objected to because of the following informalities:

a. Claims 1 and 8 are objected to as being drawn to non-elected inventions. Claim 1 recites pathogens and claim 8 recites various non-elected tumor-associated antigens. The claims have been amended to reflect the elected species under examination.

b. Claim 23 is objected to in the recitation “with an dissociation

constant....” The Office Action recommended revising claim 23 to recite “with a dissociation constant....” Claim 23 has been amended accordingly.

Applicants request withdrawal of these objections.

Claim Rejections – 35 USC § 112

Claim 30 is rejected under 35 U.S.C. 112, second paragraph for reciting a trademark in a claim as a limitation to identify or describe a particular material or product. Claim 30 has been amended to recite the generic name “paclitaxel.” Applicants request withdrawal of this objection.

Claim Rejections – 35 USC § 102

Claims 1-3, 5, 9-13, 15-16, 24-32, 34-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Hansen et al. [a] (WO99/66951, 12/29/1999). Claims 1-3, 5, 9-13, 15-16, 24-32, 34-35 are provisionally rejected under 35 U.S.C. 102(e) as being anticipated by copending Application No. 09/337,756; Hansen et al. [b] (now allowed) which has a common inventor with the instant application.

Rejections under 35 USC 102 are improper unless each and every element of the claimed subject matter is disclosed in a single prior art reference. Applicants submit that neither reference, Hansen et al. [a] nor Hansen et al. [b], disclose each and every element of claim 1, as currently amended, namely, that the multispecific targeting protein and hapten-enzyme conjugate are mixed together in the ratio of from 5:1 to 1:5. Claim 42 further recites that the multispecific targeting protein and hapten-enzyme conjugate are mixed together in the ratio of from 2:1 to 1:2.

Thus, neither Hansen et al. [a] nor Hansen et al. [b] anticipate the claims, as presently amended because Hansen et al. [a] and Hansen et al. [b] fail to teach the cited ratios. Therefore, claims 1-3, 5, 9-13, 15-16, 24-32, 34-35 are not anticipated by Hansen et al. [a] or Hansen et al. [b]. Applicants respectfully request withdrawal of the rejection.

Claim Rejections – 35 USC § 103

Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Hansen et al. [a] (WO 99/66951, 12/29/1999) in view of Basu et al. (International Journal of Cancer, 62:472-479, 1995).

Claims 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hansen et al. [a] in view of Danks et al. (Clinical Cancer research 5:917-924, April 1999) and Searle (WO 00/43541, published 7/27/2000).

Claims 6, 10, 14 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hansen et al. [a] in view of Barbet et al. (U.S. Patent 5,256,395, issued 10/26/1993) and Haisma et al. (Blood, 92(1):184-190, 1998).

Claims 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hansen et al. [a] in view of Danks et al. (Clinical Cancer research 5:917-924, April 1999) and Searle (WO 00/43541, published 7/27/2000).

All of these rejections are based on Hansen et al. [a] in combination with other references. Therefore, once the impropriety of using Hansen et al. [a] in the rejections is established, all of the rejections based on Hansen et al. [a] in combination with the other references must fall.

A *prima facie* case of obviousness requires: 1) some suggestion or motivation, either in the references themselves or in the knowledge generally available in the art, to modify the reference or combine the teachings; 2) a reasonable expectation of success; 3) the prior art reference or references must teach or suggest all the claim limitations. [MPEP 2142.]

As discussed above, Hansen et al. [a] does not provide sufficient suggestion or motivation to combine the references because Hansen et al. [a] does not teach or suggest all the claim limitations, notably that the multispecific targeting protein and hapten-enzyme conjugate are mixed together in the ratio of from 5:1 to 1:5. This deficiency is not corrected by any of the other cited references, either alone or in combination.

There is no disclosure in any of the other cited references of a multispecific targeting protein and hapten-enzyme conjugate that are mixed together in the ratio of from 5:1 to 1:5. The Office Action is unable to point to any disclosure in Hansen et al. [a], Basu et al., Barbet et al. Haisma et al., Danks et al. or Searle et al. that discloses this element of the claimed subject matter.

Double Patenting

Claims 1-3, 5-32 and 34-35 are rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 16 and 18 of U.S. Patent No. 6,962,702 B2 in view of Hansen et al. [a] and Basu et al. and Barbet et al. and Haisma et al. (Blood, 92(1):184-190, 1998) and Danks et al. (Clinical Cancer Research 5:917-924, April 1999) and Searle (WO 00/43541, published 7/27/2000).

Applicants respectfully traverse the double patenting rejection of claims 1-3, 5-32 and 34-35. Claims 1, 16 and 18 of U.S. Patent 6,962,702 fail to recite that the "multispecific targeting protein and hapten-enzyme conjugate are mixed together in the ratio of from 5:1 to 1:5." Moreover, claim 1 of U.S. Patent 6,962,702 fails to recite that the steps are carried out in the particular order as recited in the presently amended claim 1.

Therefore, in the present application, independent claim 1 and claims 3, 5-32, 34 and 35 that depend from it, directly or indirectly, are patentably distinct from claims 1, 16 and 18 of U.S. Patent 6,962,702.

Claims 1-3, 5-32 and 34-35 are provisionally rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 12-18 of copending Application No. 09/337,756 (now allowed) in view of Hansen et al. [a] (WO 99/66951, 12/29/1999) and Basu et al. (International Journal of Cancer, 62:472-479, 1995) and Barbet et al. (U.S. Patent 5,256, issued 10/26/1993) and Haisma et al. (Blood, 92(1):184-190, 1998) and Danks et al. (Clinical Cancer Research 5:917-924, April 1999) and Searle (WO 00/43541, published 7/27/2000).

Applicants request that the rejection be held in abeyance until such time as allowable subject matter is indicated in one of the two applications. Until such time, the rejection is "provisional" and is indicated as such in the Official Action. According to MPEP 822.01:

The "provisional" double patenting rejection should continue to be made by the examiner in each application as long as there are conflicting claims in more than one application unless that "provisional" double patenting rejection is the only rejection remaining in one of the applications. If the "provisional" double patenting rejection in one application is the only rejection

remaining in that application, the examiner should then withdraw that rejection and permit the application to issue as a patent, thereby converting the "provisional" double patenting rejection in the other application(s) into a double patenting rejection at the time the one application issues as a patent.

Conclusion

Accordingly, all of the claims remaining in this application should now be seen to be in condition for allowance. A prompt notice to that effect is respectfully solicited. If there are any remaining questions, the Examiner is requested to contact the undersigned at the number listed below.

Respectfully submitted,

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